

Sept. 12, 2018

Exhibit 29

**Internal Revenue Code Section 45Q  
Background Regarding Tax Credit for CO<sub>2</sub> Enhanced Oil Recovery,  
Secure Geological Storage Requirement  
And Amendment Language**

**Section 45Q**

Section 45Q of the Internal Revenue Code, enacted in 2008, provides a tax credit of \$10 per metric ton of CO<sub>2</sub> –

1. captured by the taxpayer at an industrial facility 1/,
2. used as a tertiary injectant in an enhanced oil or gas recovery project, and
3. disposed of by the taxpayer in secure geological storage. 2/

**Definition of Secure Geological Storage**

Section 45Q(d)(2) provides that The Secretary of the Treasury, in consultation with the Administrator of the EPA, the Secretary of Energy, and the Secretary of the Interior, shall establish regulations for determining adequate security measures for the geological storage of CO<sub>2</sub> under 45Q, such that the CO<sub>2</sub> does not escape into the atmosphere.

The federal government has not issued regulations under this section. The Internal Revenue Service has, however, issued guidance, under Notice 2009-83, which sets forth the requirements by which taxpayers claiming 45Q tax credits must abide to show that CO<sub>2</sub> used in EOR has been disposed of in “secure geological storage.”

Specifically, Notice 2009-83 requires that:

- In order to qualify for the § 45Q credit, a taxpayer must either physically or contractually dispose of captured CO<sub>2</sub> in secure geological storage using adequate security measures.
- In the event that a taxpayer disposes of the qualified CO<sub>2</sub> contractually, the taxpayer must ensure that the contracting party complies with the requirements of this section of the notice at all times, and the taxpayer must be able to provide documentation of such compliance.
- **GHG Reporting Rule.** The taxpayer must abide by the EPA’s Mandatory Greenhouse Gas (GHG) Reporting Rule (Reporting Rule), using the methodology, inputs, and equations in the Reporting Rule (or any successor rule) to calculate the amount of CO<sub>2</sub> measured at the source of capture. The amount reported under the Reporting Rule (or any successor rule) must be consistent with the amount of qualified CO<sub>2</sub> taken into account for purposes of the § 45Q credit.
- **Safe Drinking Water Act Underground Injection Control Program.** Taxpayers subject to the EPA’s Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) Program Rules issued December 2010, for the new “Class VI” CO<sub>2</sub> Geologic Sequestration Wells, must follow the modeling, monitoring, well construction, and other requirements of the relevant permit as required under such rules.

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1/ A qualified industrial facility is any facility owned by the taxpayer, at which carbon capture equipment is placed in service, and which captures not less than 500,000 metric tons of CO<sub>2</sub> during the taxable year. Sec. 45Q(c)(3).

2/ Sec. 45Q(a)(2).

- *Compliance with Additional (Future) Regulatory Requirements.* The Treasury Guidance also provides that taxpayers must comply with any “additional or different requirements for secure geological storage, including additional methodology, inputs, and equations to calculate the amount of CO<sub>2</sub> measured and verified at the source of injection and/or the amount of CO<sub>2</sub> emitted from secure geological storage. Furthermore, various aspects of geologic sequestration, including well construction, operation, well plugging, and post-injection site closure may be subject to other existing or future requirements from government bodies, including EPA’s regional or state UIC programs. Any taxpayer claiming the § 45Q credit must follow such additional requirements together with the Reporting Rule” .. (as well as the UIC program rule as applicable and the geologic sequestration rule, once they are finalized) “in order to demonstrate secure geological storage for purposes of the § 45Q credit.” 3/

### **Proposed Amendment to Definition of Secure Geological Storage**

The amendment seeks to clarify and remove uncertainty with regard to defining the requirements by which taxpayers claiming 45Q tax credits must abide to show that CO<sub>2</sub> used in EOR has been disposed of in “secure geological storage.”

This amendment is necessary to ensure that taxpayers that dispose of CO<sub>2</sub> in EOR operations and may wish to claim the credit are not subjected to excessive, uncertain, changing, confusing and/or unworkable requirements in order to claim the tax credit. Absence of such clarity could render the credit unusable as an incentive for the capture and long-term storage of anthropogenic CO<sub>2</sub>.

Many EOR operators will not be able to satisfy a requirement to report the use of anthropogenic CO<sub>2</sub> under Subpart RR of the Mandatory GHG Reporting Rules. Requiring reporting under Subpart RR would be inappropriate because it was not designed for EOR operations. For example: Subpart RR conflicts with state resource law prohibiting waste because the permanent storage of captured CO<sub>2</sub> limits future oil production; Subpart RR requires monitoring long after EOR operators have lost their lease rights of access; and, Subpart RR requirements create significant operational barriers and expose operators to litigation risk.

And more significantly, the EPA’s Class VI well requirements under the UIC rules of the Safe Drinking Water Act are designed for dedicated CO<sub>2</sub> storage facilities; they were not designed for Oil and gas wells in which operators utilize CO<sub>2</sub> as a tertiary injectant. These Class VI rules require high pressure CO<sub>2</sub> storage that is not appropriate or economical for EOR wells. They also impose stringent monitoring and verification requirements, and indefinite liability for any potential release. For most if not all CO<sub>2</sub> EOR operators, the risks and costs associated with the Class VI rules would mean they would not accept anthropogenic CO<sub>2</sub> subject to these requirements.

EPA recognized in a memo dated April 23, 2015 that the “Geologic storage of CO<sub>2</sub> can continue to be permitted under the UIC Class II program. EOR wells across the U.S. are currently permitted as UIC Class II wells. CO<sub>2</sub> storage associate CO<sub>2</sub> with Class II wells is a common occurrence, and CO<sub>2</sub> can be safely stored where injected through Class II-permitted wells for the purpose of oil or gas-related recovery.” In other words, under the Internal Revenue Code section 45Q definition, the requirements for storage of CO<sub>2</sub> claimed in connection with the tax credit may be more stringent than what the EPA currently requires under SDWA rules absent the tax Code.

### Proposed Section 45Q Amendment

Policy Argument: The 45Q tax credit is of no use if the CO<sub>2</sub> storage environmental requirements and potential liabilities are so significant as to prevent any taxpayers from claiming the credit. This amendment clarifies these requirements in a way consistent with current EPA policy governing CO<sub>2</sub> EOR wells.

### Legislative Language:

Section 45Q(d) is amended by striking paragraph (2) and inserting a new paragraph (2) as follows –

**(2) Secure Geological Storage.** The Secretary, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, and the Secretary of the Interior, shall establish regulations for determining adequate security measures for the geological storage of carbon dioxide. Such regulations shall provide –

(A) that carbon dioxide under subsection (a)(1)(B) will be considered stored in secure geological storage when in compliance with rules promulgated by the Environmental Protection Agency under Subpart RR of the Mandatory Greenhouse Gas Reporting Program under the Clean Air Act and rules under the Safe Drinking Water Act applicable to carbon dioxide disposed of in secure geological storage and not utilized as a tertiary injectant in an enhanced oil or natural gas recovery project; and

(B) that carbon dioxide under subsection (a)(2)(C) will be considered stored in secure geological storage when in compliance with rules promulgated by the Environmental Protection Agency applicable to carbon dioxide utilized as a tertiary injectant in an oil or natural gas recovery project –

- (i) under Subpart UU of the Mandatory Greenhouse Gas Reporting Program under the Clean Air Act applicable to carbon dioxide, as in effect on the date of enactment of this Act, and
- (ii) under the Underground Injection Control program of the Safe Drinking Water Act applicable to Class II wells, as in effect on the date of enactment of this Act.